

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IRVING KESLER, an individual,

Plaintiff,

v.

CONTINENTAL CASUALTY
COMPANY, an Illinois Insurance
Company; *et al*,

Defendants.

No. 05-00391 MJJ

Granted
**STIPULATION EXTENDING TIME TO SERVE
THE THIRD-PARTY COMPLAINT UPON THE
PERSONAL REPRESENTATIVE OF THE
ESTATE OF DONALD KESLER**

WHEREAS, on February 19, 2005, Plaintiff Irving Kesler filed his Amended Complaint against Defendants Continental Casualty Company ("Continental") and Union Pacific Railroad Company;

WHEREAS, on February 1, 2005, Continental filed a Third-Party Complaint against Third-Party Defendants, including the legal representative of the Estate of Donald Kesler;

WHEREAS, in the underlying action, *Union Pacific Railroad v. West Coast Metals, et al.*, (U.S.D.C. N.D. Cal. No. 04-02835) (the "Union Pacific Action"), Union Pacific has named the Estate of Donald Kesler as a defendant pursuant to Section 550(a)

1 of the California Probate Code, insofar as Union Pacific seeks to establish Donald
2 Kesler's liability for which Donald Kesler was allegedly protected by insurance;

3 WHEREAS, Continental contends that, pursuant to Section 553 of the
4 California Probate Code, it must, in its Third-Party Complaint, join a personal
5 representative of the Estate of Donald Kesler insofar as Continental is contesting its
6 liability with respect to the Union Pacific Action;

7 WHEREAS, Donald Kesler died in 2000 in the County of Sonoma;

8 WHEREAS, Continental has effected proper service on all parties in this
9 matter other than the personal representative of the Estate of Donald Kesler;

10 WHEREAS, the Estate of Donald Kesler was not administered or probated
11 according to the Sonoma County Probate Department and Continental contends that, as a
12 consequence, there is no personal representative of the Estate of Donald Kesler as
13 "personal representative" is defined under Section 58 of the California Probate Code;

14 WHEREAS, in order to effect service, a personal representative must be
15 appointed and the process of appointing a personal representative may take more than two
16 months;

17 WHEREAS, if the process of appointment cannot be concluded prior to
18 August 8, 2005, Continental will apprise the Court of the status of the appointment and
19 seek an appropriate extension;

20 WHEREAS, Continental has made and will continue to make a good faith
21 effort to serve the Estate of Donald Kesler;

22 WHEREAS, parties desire to resolve this issue with as little intrusion as
23 possible upon the family of Donald Kesler;

24 WHEREAS, Civil Local Rule 6-2 of the Northern District of California allows
25 a request made by written stipulation for a Court order enlarging time that involves papers
26 to be filed with the Court;

27 WHEREAS, this request does not affect any hearing or proceeding on the
28 Court's calendar;

1 WHEREAS, it is in the interest of justice to extend Continental's time to serve
2 process on the legal representative of the Estate of Donald Kesler.

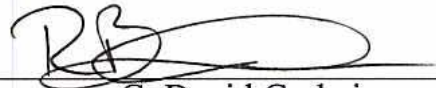
3 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and
4 among the undersigned counsel for parties in this action:

5 1. Continental's time to effect service of process on the personal
6 representative of the Estate of Donald Kesler is hereby extended to August 8, 2005.

7
8 Dated: June 2, 2005

9 CARROLL, BURDICK & McDONOUGH
10 LLP

11 By



G. David Godwin
Robert Binion

12
13 CORTNER McNABOE COLLIAU &
ELENIOUS

14 Mark Gamboa

15 Attorneys for Defendant
16 Continental Casualty Company, erroneously
sued herein as "CNA Insurance Company"

17
18 Dated: June 3, 2005

19 LAW OFFICES OF HANS W. HERB

20 By Hans Herb ^{by R. Binion}
_{on behalf of H. Herb}

Hans W. Herb

21
22 Attorney for Plaintiff
Irving Kesler

1 Dated: June 3, 2005

2 GREENBERG, GLUSKER FIELDS
3 CLAMAN MACHTINGER & KINSELLA
4 LLP

5 By 

6 David E. Cranston
7 Jennifer T. Taggart
8 Shiraz D. Tangri

9 Attorneys for Defendant
10 Union Pacific Railroad Company

11 Dated: June __, 2005

12 BEYERS | COSTIN

13 By

14 Cameron Kirk, Jr.
15 Stephen Perry

16 Attorneys for Third-Party Defendants
17 West Coast Metals, Inc., Jack L. Gardner and
18 William Whitman

19 Dated: June __, 2005

20 LEVY, RAM & OLSON LLP

21 By

22 Arthur D. Levy
23 Heather M. Mills

24 Attorneys for Third-Party Defendants
25 West Coast Welders Supply Co., Inc., West
26 Coast Scrap Producers, Inc., Richard L.
27 Bradley, as an individual and as Trustee of
28 the Richard L. Bradley Trust

It is SO ORDERED:

Dated: _____

Hon. Martin J. Jenkins
United States District Judge

06-03-05 10:33am From-BEYERS COSTIN

T-268 P.02/02 F-782

1 Dated: June __, 2005

2 GREENBERG, GLUSKER FIELDS
3 CLAMAN MACHTINGER & KINSELLA
4 LLP

5 By

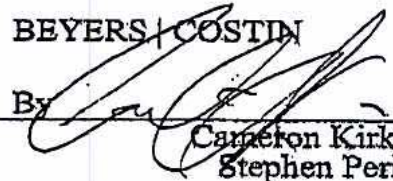
6 David E. Cranston
7 Jennifer T. Taggart
8 Shiraz D. Tangri

9 Attorneys for Defendant
10 Union Pacific Railroad Company

11 Dated: June 3, 2005

12 BEYERS | COSTIN

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14 
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16 Stephen Perry

17 Attorneys for Third-Party Defendants
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19 William Whitman

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25 Attorneys for Third-Party Defendants
26 West Coast Welders Supply Co., Inc., West
27 Coast Scrap Producers, Inc., Richard L.
28 Bradley, as an individual and as Trustee of
the Richard L. Bradley Trust

29 It is SO ORDERED:

30 Dated: _____

31 Hon. Martin J. Jenkins
32 United States District Judge

33 CBM-IFG/SF260724.2

34 -4-

35 STIP. EXTENDING TIME TO SERVE 3D-PARTY COMP. UPON REP. OF ESTATE OF KESLER - CASE NO. 05-00391-MJJ

1 Dated: June __, 2005

2 GREENBERG, GLUSKER FIELDS
3 CLAMAN MACHTINGER & KINSELLA
4 LLP

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6 David E. Cranston
7 Jennifer T. Taggart
8 Shiraz D. Tangri

9 Attorneys for Defendant
10 Union Pacific Railroad Company

11 Dated: June __, 2005

12 BEYERS | COSTIN

13 By

14 Cameron Kirk, Jr.
15 Stephen Perry

16 Attorneys for Third-Party Defendants
17 West Coast Metals, Inc., Jack L. Gardner and
18 William Whitman

19 Dated: June 2, 2005

20 LEVY, RAM & OLSON LLP

21 By

22 *Arthur D. Levy*
23 Heather M. Mills

24 Attorneys for Third-Party Defendants
25 West Coast Welders Supply Co., Inc., West
26 Coast Scrap Producers, Inc., Richard L.
27 Bradley, as an individual and as Trustee of
28 the Richard L. Bradley Trust

It is SO ORDERED:

Dated: 6/8/2005

/s/

Hon. Martin J. Jenkins
United States District Judge

